



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

JAN - 8 2009

200914072

Uniform Issue List: 402.00-00

T:EP:RK:T3

Legend:

Taxpayer A	=	****
Company B	=	****
Amount A	=	****
Amount B	=	****
Amount C	=	****
Amount D	=	****
Amount E	=	****
Plan X	=	****
Plan Y	=	****
Date 1	=	****
Date 2	=	****

Dear ****:

This is in response to your request dated October 7, 2007, as supplemented by correspondence dated July 25, 2008, August 25, 2008, and from information gathered during your conference of right held on June 30, 2008, and supplemented by an additional conference on September 3, 2008, in which you request a waiver of the 60-day rollover requirement contained in section 402 (c) (3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A was a participant in Plan X, a profit-sharing plan that was intended to be qualified under section 401 (a) of the Code. Taxpayer A received a distribution from Plan X in the form of a check dated Date 1. Company B, the administrator of Plan X, executed a distribution check of Amount A to Taxpayer A. Company B withheld Amount B in federal income tax from Amount C, the gross distribution amount. Amount A was distributed to Taxpayer A in the form of a paper check that was delivered by regular mail via the United States Postal Service.

Taxpayer A, on Date 2, attempted to roll over Amount C into Plan Y. Plan Y is a profit-sharing plan sponsored by Taxpayer A's employer and is intended to be qualified under section 401 (a) of the Code. Taxpayer A, on Date 2, endorsed the paper check representing Amount A and executed a cashier's check for Amount D. Taxpayer A, on Date 2, mailed both checks to the administrator of Plan Y. Date 2 was ten days after the expiration of the 60-day period prescribed by section 402 (c) (3) of the Code.

During this 70-day period, Taxpayer A was the care provider for his ill fiancée. Taxpayer A's fiancée had endured multiple surgeries prior to Date 1 and had various treatments, appointments and persistent pain during this 70-day period. Documentation submitted by Taxpayer A indicates that no medical procedures occurred during or shortly before or after the 60-day rollover period. Taxpayer A provided information reflecting that he and his fiancée both continued to work primarily from their home during the 60-day rollover period. Taxpayer A stated during the conference of right that during the rollover period he missed no personal appointments and was able to timely meet other outstanding financial obligations.

Based on these facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount E contained in section 402 (c) (3) of the Code in this instance.

Section 402 (a) of the Code provides that, except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401 (a) which is exempt from tax under section 501 (a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 of the Code.

Section 402 (c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402 (c) (3) (A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property.

Section 402 (c) (3) (B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402 (c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402 (c) (3) (B) of the Code.

Section 401 (a) (31) of the Code provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401 (a) (31) of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402 (c) (3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Taxpayer A has not demonstrated that his inability to complete a timely rollover of Amount E was caused by any of the factors cited in Revenue Procedure 2003-16. Amount E is Amount A plus Amount D. Taxpayer A asserts that his failure to timely execute a rollover was due to hardship caused by his fiancée's serious medical condition. The relevant facts and circumstances do not support this finding. By his own testimony, Taxpayer A was able to continue to meet existing work and personal obligations during the rollover period despite his fiancée's illness. Nothing in the facts would suggest that the ability to execute a timely rollover was beyond Taxpayer A's control.

Therefore, pursuant to section 402 (c) (3) (B) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount A from Plan X.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k) (3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact ***, I.D. # *** at ***. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,


Frances V. Sloan, Manager,
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose